

EXPLANATORY STATEMENT for

ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313

Prepared by the Australian Securities and Investments Commission

ASIC Market Integrity Rules (Futures Markets) 2017

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313 (the *instrument*) under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Futures Markets) 2017* (the *Rules*).

Under subrule 1.2.1(1) of the Rule, ASIC may relieve any person or class of persons from the obligation to comply with a provision of the Rules. Under Rule 1.2.3 of the Rules, ASIC may specify the period during which any relief from the obligation to comply with a provision of the Rules may apply.

Unless the contrary intention appears, capitalised terms in this Explanatory Statement have the same meaning as in the Rules.

1. Background

ASIC Class Rule Waiver [CW 17/251]

On 20 March 2017 ASX 24 replaced its ASX Trade24 derivatives trading platform with the ASX 24 New Trading Platform (*NTP*). While the NTP has greater functionality in many respects, it does not have functionality which will enable a Market Participant to input aggregate loss limits into the Trading Platform. As a result, Market Participants are unable to comply with paragraphs 2.2.1(1)(a), (ab) and (c) of the *ASIC Market Integrity Rules (ASX 24 Market) 2010* (the *ASX 24 Rules*).

[CW 17/251] relieves a Market Participant from the obligation to comply with:

- (a) paragraphs 2.2.1(1)(a) of the ASX 24 Rules, to the extent that paragraph requires the Market Participant to set and document an appropriate pre-determined aggregate loss limit on each of its Client Accounts;
- (b) paragraph 2.2.1(1)(ab) of the ASX 24 Rules, to the extent that paragraph requires the Market Participant to set and document an appropriate pre-determined aggregate loss limit on each of its House Accounts; and
- (c) paragraph 2.2.1(1)(c) of the ASX 24 Rules, to the extent that paragraph requires a Market Participant's risk manager to input the aggregate loss limits determined by the Market Participant in accordance with paragraphs 2.2.1(a) and 2.2.1(ab) into Trading Platform account maintenance.

The relief in [CW 17/251] is conditional upon a Market Participant implementing appropriate processes to monitor the aggregate loss limits on each of its Client Accounts and House Accounts.

Consolidation of the ASIC Market Integrity Rules

As part of its supervisory responsibilities, ASIC reviewed the 14 market integrity rule books in force in late 2016 and identified the need to consolidate certain market integrity rule books which covered substantively similar existing obligations across like domestic licensed markets.

In Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules (CP 277)*, ASIC proposed to consolidate the Pre-Commencement Market Integrity Rules to create a single set of market integrity rules for the ASX 24 and FEX Markets.

Following public consultation, ASIC made the Rules in November 2017. Generally, the Rules maintain the substance of the regulatory regime embodied in market integrity rules (the ***Pre-Commencement Market Integrity Rules***) applicable prior to the commencement of the Rules, including the ASX 24 Rules. The Rules will repeal the Pre-Commencement Market Integrity Rules on 7 May 2018.

Upon the repeal of the Pre-Commencement Market Integrity Rules, ASIC Waivers made under the Pre-Commencement Market Integrity Rules will also be repealed, including ASIC Class Waiver [CW 17/251].

In Report 547 *Response to submissions on CP 277 Proposals to consolidate the ASIC market integrity rules (REP 457)* ASIC announced that as part of its project to consolidate the market integrity rules it would remake existing individual and class waivers under the Rules before 7 May 2018.

Paragraphs 2.2.1(1)(a), (ab) and (c) of the ASX 24 Rules correspond to paragraphs 2.2.1(1)(a), (ab) and (c) of the Rules respectively.

2. Purpose of the instrument

The purpose of the instrument is to relieve Market Participants from the obligation to:

- (a) set and document aggregate loss limits on each of its Client Accounts and House Accounts, as required by paragraphs 2.2.1(1)(a) and (ab) of the Rules; and
- (b) input these aggregate loss limits into Trading Platform account maintenance.

The relief in the instrument is given on the basis that ASIC accepts that:

- the requirements in paragraphs 2.2.1(1)(a) and (ab) of the Rules to set and document appropriate pre-determined aggregate loss limits is part of a suite of controls mandated to ensure Market Participants manage their risk across multiple platforms, order management and overlaying risk systems. The conditional relief from the obligation to comply with just one of the suite of controls will not adversely affect a Market Participant's overall risk

management processes, nor will it undermine the intended purpose of these subrules; and

- the NTP does not have the necessary functionality to allow Market Participants to fully comply with paragraph 2.2.1(1)(c) in respect of aggregate loss limits.

Accordingly, in order to address this incompatibility, while still giving effect to the intended purpose of Rule 2.2.1 of the Rules, the instrument is given on condition that Market Participants monitor the aggregate loss limit on each of its Client Accounts and House Accounts.

ASIC notes that the requirement to set and document aggregate loss limits did not contemplate potential Trading Platform upgrades, such as the NTP, and reflected the functionality of the ASX 24 systems in existence at the time the ASX 24 Rules were made. The instrument gives effect to the intended purpose of these requirements by making the relief conditional on a Market Participant making its own, other arrangements to monitor the aggregate loss limit on each of its Client Accounts and House Accounts. ASIC considers that this approach addresses the incompatibility resulting from the introduction of the NTP, while maintaining a principles based alternate protection for market integrity.

The instrument is an interim measure and will apply until 20 March 2020 to enable ASIC to more fully consider how the Rules should be amended to best achieve the aim of the risk management requirements in the long term, in consultation with ASX 24 and Market Participants.

3. Operation of the instrument

Name of legislative instrument

Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313*.

Commencement

Section 2 of the instrument provides that the instrument commences on the later of 7 May 2018 and the day after the instrument is registered on the Federal Register of Legislation.

Authority

Section 3 of the instrument provides that the instrument is made under subrule 1.2.1(1) and Rule 1.2.3 of the Rules.

Interpretation

Section 4 of the instrument provides that in the instrument, unless the contrary intention appears, capitalised terms have the same meaning as in the Rules.

Waiver from aggregate loss limit requirements

Subsection 5(1) of the instrument provides that a Market Participant does not have to comply with paragraph 2.2.1(1)(a) of the Rules to the extent that paragraph requires the Market Participant to set and document an appropriate pre-determined aggregate loss limit on each of its Client Accounts.

This waiver does not affect a Market Participant's other obligations in paragraph 2.2.1(1)(a) of the Rules, to set and document appropriate pre-determined Order and/or position limits including a volume per Order limit and an aggregate net session limit for each of its Client Accounts.

Subsection 5(2) of the instrument provides that a Market Participant does not have to comply with paragraph 2.2.1(1)(ab) of the Rules to the extent that paragraph requires the Market Participant to set and document an appropriate pre-determined aggregate loss limit on each of its House Accounts.

This waiver does not affect a Market Participant's other obligations in paragraph 2.2.1(1)(ab) of the Rules, to set and document appropriate pre-determined Order and/or position limits including a volume per Order limit and an aggregate net session limit for each of its House Accounts

Subsection 5(3) of the instrument provides that a Market Participant does not have to comply with paragraph 2.2.1(1)(c) of the Rules to the extent that paragraph requires a Market Participant's risk manager to input the aggregate loss limits set and determined by the Market Participant in accordance with paragraphs 2.2.1(1)(a) and 2.2.1(1)(ab) of the Rules into Trading Platform account maintenance and to establish those aggregate loss limits as preset accounts.

This waiver does not affect the obligation in paragraph 2.2.1(1)(c) of the Rules to input pre-determined Order and/or position limits including a volume per Order limit and an aggregate net session limit into Trading Platform account maintenance and to establish those limits as preset accounts.

Conditions

Subsection 6(1) of the instrument provides that it is a condition of the waiver in subsection 5(1) of the instrument that a Market Participant implements appropriate processes to monitor the aggregate loss limit on each of its Client Accounts.

Subsection 6(2) of the instrument provides that it is a condition of the waiver in subsection 5(2) of the instrument that a Market Participant implements appropriate processes to monitor the aggregate loss limit on each of its House Accounts.

Expiry

Section 7 of the instrument provides that the waivers in section 5 of the instrument cease to apply at the end of 20 March 2020.

4. Consultation

Before making [CW 17/251], ASIC consulted with the ASX and several Market Participants. ASIC received broad support for its proposal to make [CW 17/251] to address the difficulties in complying with paragraphs 2.2.1(1)(a), (ab) and (c) resulting from the introduction of the NTP and other legacy issues. No significant

issues were raised in relation to ASIC's proposal and ASIC did not receive any feedback opposing the making of [CW 17/251].

The instrument is part of a wider project to consolidate the market integrity rules. ASIC consulted extensively with market operators, market participants and industry bodies before making the Rules and the instrument.

The consultation period for Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules (CP 277)* occurred between 24 January 2017 and 7 March 2017. ASIC held over 25 meetings with stakeholders during and following that period. In addition, ASIC consulted ASIC's Market Advisory Panel on the proposals. ASIC received five non-confidential submissions and six confidential submissions to CP 277 from a broad range of stakeholders including from market participants, market operators and industry associations.

The Office of Best Practice Regulation has assessed the proposals implemented by the Rules and the instrument as having a minor impact on business, community organisations or individuals and confirmed that no further analysis, in the form of a Regulatory Impact Statement is required (OBPR ID 22449).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313

ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

Under paragraphs 2.2.1(1)(a) and (ab) of the *ASIC Market Integrity Rules (Futures Markets) 2017* (the **Rules**), a Market Participant must demonstrate prudent risk management procedures including, but not limited to, setting and documenting appropriate pre-determined Order and/or position limits on each of its Client Accounts and House Accounts, including an aggregate loss limit.

Under paragraph 2.2.1(1)(c) of the Rules, the limits determined in paragraphs 2.2.1(1)(a) and (ab), including the aggregate loss limit, must be input by a Market Participant's risk manager into Trading Platform account maintenance and will be established as preset accounts.

The purpose of these requirements is to ensure that each Market Participant adequately manages its risk in the course of trading on its Client Accounts and House Accounts.

The relief in the instrument addresses incompatibility between these requirements and functionality of ASX 24 New Trading Platform (**NTP**).

The instrument relieves a Market Participant from the obligation to comply with:

- (a) paragraphs 2.2.1(1)(a), to the extent that paragraph requires the Market Participant to set and document an appropriate pre-determined aggregate loss limit on each of its Client Accounts. This waiver is conditional on the Market Participant implementing appropriate processes to monitor the aggregate loss limit on each of its Client Accounts;
- (b) paragraph 2.2.1(1)(ab), to the extent that paragraph requires the Market Participant to set and document an appropriate pre-determined aggregate loss limit on each of its House Accounts. This waiver is conditional on the Market Participant implementing appropriate processes to monitor the aggregate loss limit on each of its House Accounts; and
- (c) paragraph 2.2.1(1)(c), to the extent that paragraph requires a Market Participant's risk manager to input the aggregate loss limits determined by the Market Participant in accordance with paragraphs 2.2.1(a) and 2.2.1(ab) into Trading Platform account maintenance.

The instrument provides relief until the end of 20 March 2020.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission